

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DANTE BLACK	:	NO. 00-400

MEMORANDUM AND ORDER

NOW ON this 21st day of November, 2002, the *pro se* “Motion for Correction of Sentence Rule 35(A)” filed by defendant Dante Black is denied.

On April 10, 2000, defendant, who was on parole under a Pennsylvania sentence for drug felony and firearms offenses, was arrested in possession of a gun. On July 11, 2000, defendant was indicted by a federal grand jury for violation of 18 U.S.C. § 922(g)(1), possession of a firearm by a convicted felon. On April 28, 2001, upon a car stop for a traffic violation, defendant was found in possession of a gun for a second time and was federally indicted for this offense. His state parole was revoked.

On July 9, 2001, defendant pleaded guilty to both federal gun possession charges and, on January 31, 2002, was sentenced to 84 months of custody. Sentencing tr. at 68. ¹ Defendant now moves for an order directing that the federal sentence run concurrently with the back time he received for the state parole

¹ Defendant states that he is “only requesting that the intent of the court’s sentencing [b]e amended to demonstrate that the court wanted defendant to receive proper credit and that the federal sentence be served concurrent with the state sentence defendant is presently serving.” Def. reply brief at 2. Credit for time served is not at issue. The record and transcript establish that defendant was sentenced with credit for time served and, at sentencing, the government did not object to credit for time served. Sentencing tr. at 68. Defendant contends that “credit for time served” denotes an intent to impose a concurrent sentence.

violation.²

Rule 35(c) of the Federal Rules of Criminal Procedure provides that a sentence imposed as a result of arithmetical, technical, or other clear error may be corrected “within seven days after the imposition of sentence.”³ Defendant’s motion was filed after the seven-day period and, therefore, the requested order is beyond this court’s jurisdiction. U.S. v. Diaz-Clark, 292 F.3d 1310 (11th Cir. 2002); U.S. v. Sanchez, 2002 WL 1431438 (E.D.Pa. 2002).⁴

Edmund V. Ludwig, J.

²The maximum custody date under defendant’s state sentence is October 9, 2004.

³ Fed. R. Crim. P. 35(a) currently pertains to correction of a sentence upon remand. As amended effective December 1, 2002, Rule 35(a) will set forth the seven-day rule.

⁴ Defendant references Ruggiano v. Reish, 307 F.3d 121 (3d. Cir. 2002) in support of his motion. In Ruggiano, it was held that U.S.S.G. § 5G1.3(c) allowed a sentencing judge to give credit for time served under a pre-existing state sentence and that the Bureau of Prisons was not free to ignore the judge’s intention. Id. at 131. There were no jurisdictional issues. Also, both the transcript and the written judgment expressed the judge’s intention that the federal sentence run currently with the state sentence. Id. Here, the record does not show such intent.